

# OSTER Researching Services

12897 Colonial Dr. • Mt. Airy, Md. 21771  
301-253-6040

March 11, 1988

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RECORDATION NO. FILED 1988

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MAR 11 1988 -9 50 AM

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

No. MAR 11 1988  
Date .....  
Fee \$ 13.00

ICC Washington, D. C.

Dear Ms. Lee:

Please find enclosed an original and one counterpart of a Memorandum of Railcar Lease Agreement dated January 15, 1988 between the following parties:

Lessor: Helm Locomotive Leasing  
c/o Helm Financial Corporation  
One Embarcadero Center  
Suite 3320  
San Francisco, CA 94111

Lessee: Iowa Interstate Railroad, LTD.  
818 Church Street  
Evanston, IL 60201

The equipment involved in this transaction is as follows:

Equipment: 1. GP-38 Locomotive (GM)  
IAIS 600

The filing fee of \$13 is enclosed. Thank you.

Sincerely,

*Mary Ann Oster*

Mary Ann Oster  
Research Consultant

Enclosures

ICC OFFICE OF  
THE SECRETARY  
MAR 11 9 38 AM '88  
MOTOR OPERATING UNIT

*C. Ann Oster*  
*Mary Ann Oster*

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

3/11/88

OFFICE OF THE SECRETARY

Mary Ann Oster  
Research Consultant  
Oster Researching Services  
12897 Colonial Dr.  
Mt. Airy, MD. 21771

Dear Ms. Oster

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/11/88 at 9:50am, and assigned recordation number(s). 15531

Sincerely yours,

*Nesta L. McGee*

Secretary

Enclosure(s)

RECORDATION NO. 5531 1425

MEMORANDUM OF  
RAILCAR LEASE AGREEMENT

MAR 11 1988 - 9 10 AM  
INTERSTATE COMMERCE COMMISSION

THIS MEMORANDUM OF RAILCAR LEASE AGREEMENT is intended to evidence the Railcar Lease Agreement dated as of January 15, 1988 (the "Lease") between Helm Locomotive Leasing, a joint venture, (the "Lessor") and the Iowa Interstate Railroad, LTD., an Iowa corporation (the "Lessee"), for the purpose of satisfying the requirements of recordation with the Interstate Commerce Commission under Section 49 of U.S.C. 11303. The Lessor is the owner of the locomotive more fully described in Annex A hereto (the "Unit"). The Lessee leased from the Lessor the Unit at the rentals and upon the terms and conditions provided in the Lease, attached hereto as Annex B.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to authority, have executed this Memorandum of Lease as of this 15th day of January, 1988.

"Lessor"

HELM LOCOMOTIVE LEASING,  
a joint venture

Attest:

John J. Adams

Title: Vice President/Finance

By:

[Signature]

Title: President

Helm Equipment Leasing Corporation,  
a joint venturer in Helm Locomotive  
Leasing

"Lessee"

IOWA INTERSTATE RAILROAD, LTD.

Attest:

D.E. Stoffer

Title: 2/10/88

By:

[Signature]

Title: General Manager

ANNEX A  
to  
Memorandum of  
Lease of Railroad Equipment  
Dated as of January 15, 1988

Equipment Description	Quantity	Lessee's Numbers
General Motors (Electro-Motive Division)	1	IAIS 600

LEASE OF RAILROAD EQUIPMENT

BETWEEN

HELM LOCOMOTIVE LEASING  
a joint venture

AND

IOWA INTERSTATE RAILROAD, LTD.

## LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT, dated as of January 15, 1988, between HELM LOCOMOTIVE LEASING, a joint venture, (hereinafter called the "Lessor") and the IOWA INTERSTATE RAILROAD, LTD., an Iowa corporation (hereinafter called the "Lessee"). The term "Affiliate" as used hereinafter means any parent or subsidiary of the Lessee and any subsidiary of any parent of the Lessee.

WHEREAS, the Lessor is owner of one EMD, GP-38 locomotive more fully described in Annex A hereto (hereinafter called the "Unit");

WHEREAS, the Lessee desires to lease from the Lessor the Unit at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Unit to the Lessee upon the following terms and conditions:

1. Delivery and Acceptance of Units. The Lessee hereby accepts the Unit together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto whereupon each Unit shall be subject thereafter to all terms and conditions of this Lease. The Lessor warrants that it has good title to the Unit free and clear of any liens and encumbrances, and has authority to enter into and perform this Lease. The Unit presently bears Mid-South Railroad reporting marks. The Lessee may repaint and stencil its name on the Unit.

2. Rentals. The Lease shall commence with respect to the Unit when said Unit is interchanged to Lessee's Railroad, and shall continue until the final rental payment is made, subject to Section 13. Upon interchange, Lessee shall have the right to reject the Unit if it has been damaged in transit or is missing any parts or components. Rent shall commence on the date Lessee places the Unit in service, but not later than one (1) days after said Unit is interchanged to the Lessee, which date is herein called the "Rent Commencement Date" and shall continue for sixty (60) months. The monthly rental shall be payable monthly in advance.

In the event the Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rental or otherwise, the Lessee shall pay the Lessor, as additional rental, to the extent permitted by applicable law, interest on such unpaid sum from its due date to date of payment by the Lessee at a rate equal to \_\_\_\_\_ per annum.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor shall this Lease terminate, or the respective obligations of the Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of the Unit from whatsoever cause, the prohibition of or other restriction against Lessee's use of the Unit, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, and present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other payments payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of the Unit except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. The rentals and other sums payable by the Lessee hereunder shall be paid without notice, demand, counterclaim, or defense by reason of any circumstance or occurrence whatsoever.

3. Term of Lease. The term of this Lease with respect to the Unit shall begin on Rent Commencement Date, and, unless sooner terminated in accordance with the provisions of this Lease, shall end on the last day of the sixtieth month thereafter.

The obligations of the Lessee hereunder (including, but not limited to, the obligations of the Lessee under Paragraphs 5, 8 and 10 hereof) shall survive the expiration or sooner termination of this Lease.

4. Identification Marks. The Lessee will cause the Unit to be kept numbered with its identifying number as set forth in Annex A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on the side of the Unit in letters not less than one inch in height, the words "Ownership subject to a security agreement filed with the Interstate Commerce Commission" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in

order to protect the title of the Lessor and the rights of the Lessor under this Lease. The Lessee will not place the Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not permit the identifying number of the Unit to be changed except in accordance with a statement of new identifying number to be substituted therefore, which statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded and deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Unit to be lettered with the names or initials or other insignia customarily used by the Lessee or its Affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Unit under this Lease.

5. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal taxes (other than the federal income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than state or city income taxes or franchise taxes measured by gross or net income based on such receipts, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or licenses (and any charges, fines or penalties in connection with or measured by, this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof), all of which taxes, assessments, licenses, charges, fines and penalties the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all taxes, assessments or licenses (and any charges, fines or penalties in connection therewith) which may be imposed upon the Unit or for the use or operation thereof or upon the Lessee's earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all taxes and assessments which might in any way affect the title of the Lessor or result in a lien upon such Unit (hereinafter called "Impositions"); provided, however, that the Lessee shall not be obligated to reimburse the Lessor for any Impositions so paid unless the Lessor shall have been legally liable with

respect thereto, or unless the Lessee shall have approved the payment thereof.

In the event any reports with respect to Impositions are required to be made on the basis of the Unit the Lessee will either make such reports in such manner as to show the interest of the Lessor in such Unit or will notify the Lessor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Impositions, pursuant to this Paragraph 5, such liability shall continue, notwithstanding the expiration or sooner termination of the term of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

The amount which the Lessee shall be required to pay with respect to any Imposition which is subject to indemnification under this Paragraph 5 shall be an amount sufficient to restore the Lessor to the same net after-tax rate of return and after-tax cash position, after considering the effect of such payment on its United States federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such Imposition not be imposed.

6. Casualty Occurrence. In the event that the Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged or obsolete or economically unserviceable for use from any cause whatsoever, or the Unit shall be condemned, confiscated, or seized, or the title to or use of the Unit shall be requisitioned for a period of 90 continuous days (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall on the next succeeding rental payment date after it shall have determined that the Unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. On such date the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus an amount equal to the settlement found on the casualty schedule opposite the payment date attached hereto as Exhibit B. Upon the making of such payment by the Lessee in respect of the Unit, the rental for such Unit shall cease to accrue as of the date of such payment, this Lease shall terminate and, all of Lessor's rights, title and interest in such unit shall automatically pass to Lessee on as is, where is basis.

Except as hereinabove in this paragraph 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to the Unit after delivery to and acceptance thereof by the Lessee hereunder.

7. Recordkeeping; Inspection. Lessee agrees to keep and maintain and make available to Lessor such record of Lessee's use, operation, inspection, repairs and maintenance of the Unit while in its possession as shall be reasonably required by Lessor. Lessor, by such agent or agents as it may designate, shall have the right at all reasonable times with reasonable notice to go upon the property of Lessee to inspect the Unit while in the possession of Lessee.

8. Compliance with Laws and Rules; Maintenance; Insurance and Indemnification. The Lessor makes no warranty or representation, either expressed or implied, as to the design, compliance with specifications, or condition of, or as to the quality of the material, equipment or workmanship in, the Unit delivered to the Lessee hereunder, and THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNIT FOR ANY PARTICULAR PURPOSE, OR AS TO CONDITION, COMPLIANCE WITH SPECIFICATIONS, QUALITY OR AS TO TITLE TO THE UNIT OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNIT, OR COMPONENT THEREOF, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which operations involving the Unit subject to this Lease may extend, with the interchange rules of the Association of American Railroads and with all rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit, to the extent such laws and rules affect the operations or use of such Unit;

and in the event such laws or rules require the alternation of such Unit, the Lessee will conform therewith, at its expense, and will maintain the same in proper condition or operation under such laws and rules; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder.

Subject to paragraph 6, the Lessee agrees, that at its own cost and expense, it will return the Unit to the Lessor at the expiration of the term or sooner termination of this Lease in good order and repair, ordinary wear and tear excepted, suitable for movement in the interchange system.

Any and all additions to the Unit and any replacements thereto and of parts thereof made by the Lessee shall constitute

accessions to such Unit and, without cost or expense to the Lessor, there shall be immediately vested in the Lessor the same interest therein as the interests of the Lessor in such Unit.

Lessee shall, at all times while this Agreement is in effect at its own expense, cause to be carried and maintained: (i) all-risk, physical loss or damage insurance with respect to the Unit; and (ii) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are satisfactory to the Lessor. All insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor as additional named insureds and shall also list Lessor and any assignee of Lessor as loss-payees on the insurance policies. Said policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. With respect to the additional insureds, Lessee's insurance policies shall be primary to any other valid and available insurance ("Other Insurance") effected by, or for, the additional insureds. Lessee shall require its insurer specifically to waive subrogation, claim and recovery with respect to any Other Insurance. Any and all deductibles in the described policies shall be paid by the Lessee.

Each obtained by Lessee pursuant to this Section shall be in accordance with the above terms and conditions, and such terms and conditions shall be set forth on the Certificate of Insurance provided to the Lessor pursuant to this Subsection. Lessee shall furnish to Lessor concurrently with execution hereof, and within thirty (30) days of receipt of a written request from Lessor, and at intervals of not more than twelve (12) calendar months from execution hereof, Certificates of Insurance evidencing the aforesaid insurance. Lessee shall provide Lessor a Certified Copy of each insurance policy upon written request. In the event that, and only with Lessor's written approval, Lessee shall be permitted to self-insure on any specified interests, the Lessee hereby warrants to place the Lessor in the same position as if the relating insurance had been effected.

The Lessee agrees to indemnify and save harmless the Lessor against any charges or claim made against the Lessor, and against an expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) which the Lessor may incur in any manner (unless resulting from the Lessor's sole negligence) by reason of entering into or the performance of this Lease or the ownership of, or which may arise in any manner out of or as a result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of, the Unit until such Unit is returned to the Lessor in accordance with the terms of the Lease, and to indemnify and save harmless the Lessor against any charge,

claim, expense, loss or liability on the account of any accident (unless resulting from the Lessor's sole negligence) in connection with the operation, use, condition, possession or storage of such Unit resulting in damage to property or injury or death to any person. The indemnities contained in this paragraph shall survive payment or performance of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all mandatory reports of which the Lessee has or reasonably should have actual knowledge, except income tax reports, to be filed by the Lessor, with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Unit or the leasing of the Unit to the Lessee. The Lessor shall notify the Lessee of any such reports of which the Lessor has actual knowledge.

9. Return of the Unit Upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to the Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessor or its Affiliates as the Lessor may reasonably designate. The Lessee shall permit the Lessor to store such Unit on such tracks free of charge for a period not exceeding ninety days after such expiration and shall transport the same to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as reasonably directed by the Lessor. The movement and storage of such Unit shall be at the expense and risk of the Lessee if the Lessor has given movement and storage instructions within the above ninety-day period; provided, however, that if the Lessor instructs the Lessee to store such Unit for a period beyond ninety days after the expiration of this Lease with respect to such Unit, such additional storage shall be at the expense and risk of the Lessor. If no movement instructions were given by the Lessor within such ninety day period, the movement and storage of the Unit after such ninety-day period shall be at the expense and risk of the Lessor. Storage charges of \_\_\_\_\_ per day shall be paid by the Lessor to the Lessee for such Unit stored on Lessee's tracks at Lessor's expense or stored due to Lessor not requesting that movement to an interchange point be commenced prior to the expiration of the ninety-day period. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same at such reasonable time or times as the Lessee shall agree to.

The assembling, delivery, storage and transporting of the Unit as provided in this paragraph 9 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Unit. If the Lessor shall elect to abandon the Unit because such Unit has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and Lessee shall thereupon assume, and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice and Lessor shall transfer title to such Unit to Lessee free and clear of any liens and encumbrances whatsoever.

10. Default. If, during the continuance of this Lease, one or more of the following events (herein sometimes called Events of Default) shall occur;

(a) default shall be made in the payment of any part of the rental provided in paragraph 2 hereof and such default shall continue for ten days after written notice is sent to Lessee;

(b) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Unit;

(c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for thirty days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

(d) any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that the status of such shall be the same as administrative expenses incurred by such a trustee or trustees

or receiver or receivers, within thirty days after such appointment, if any, or sixty days after such proceedings shall have been commenced, whichever shall be earlier;

(e) any material representation made by the Lessee herein or in any certificate or other instrument delivered under or

pursuant to any provision hereof shall prove to have been false or incorrect in any material respect on the date as of which made;

then, in any such case, the Lessor, at its option may:

(i) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Unit shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon, the Lessor may in a reasonable manner and without damage to the property of the Lessee or injury to any person by its agents enter upon the premises of the Lessee or other premises where the Unit may be and take possession of such Unit and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Unit for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (a) as representing actual loss incurred by the Lessor, damages for loss of the bargain and not as a penalty, a sum, with respect to the Unit which represents the excess of the then present value of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the then fair rental value of such Unit for such period computed by discounting to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit

during such period, such present value to be computed in each case on a basis of a        per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (b) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, including, without limitation, expenses of resale or re-leasing (including incidental transportation costs incurred by Lessor).

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

11. Return of the Unit Upon Default. If this Lease shall terminate pursuant to Paragraph 10 hereof, the Lessee shall forthwith deliver possession of the Unit to the Lessor. The condition of the Unit upon such return shall be as required pursuant to Paragraph 8 hereof. For the purpose of delivering possession of such Unit to the Lessor as above required, the Lessee shall at its own cost, expense, and risk:

(a) Forthwith place such Unit upon such storage tracks of the Lessee or its Affiliates as the Lessor reasonably may designate or, in the absence of such designation, as the Lessee may select,

(b) permit the Lessor to store such Unit on such tracks for a period not exceeding six months at the risk of the Lessee, and

(c) transport the same, at any time within such six-month period, to any place on the lines of railroad operated by the Lessee or any of its Affiliates or to any connecting carrier for shipment, all as reasonably directed by the Lessor. The assembling, delivery, storage

and transporting of the Unit as provided in this paragraph 11 are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Unit.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Paragraph 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of the Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit. In connection therewith Lessee will supply Lessor with such documents as Lessor may reasonably request.

12. Assignment; Possession and Use. Conditioned upon the Lessee performing all of the terms, covenants, and conditions of this Lease, the Lessor, its successors and assigns will not disturb the Lessee's peaceable and quiet possession and use of the Unit during the term of this Lease, provided, that no Event of Default has occurred and is continuing.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including but not limited to the rights under Paragraphs 5, 8 and 10) shall inure to the benefit of the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall apply and refer to each assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee may without any prior consent of the Lessor sublease the Unit or assign this Lease to anyone or more of the Lessee's Affiliates, or with the prior written consent of the Lessor sublease the Unit to third parties; provided, that (i) such sublease or assignment shall provide that the Unit shall be operated and maintained in accordance with the terms hereof; (ii) the Lessee shall provide the Lessor with 10 days advance notice of any such sublease or assignment and a copy of such sublease or assignment; (iii) such sublease shall be subject and subordinate to the terms and provisions of this Lease and the interests of the Lessor; and (iv) no such sublease or assignment shall relieve Lessee of its obligations hereunder, which shall remain those of a principal and not a surety.

The Lessee represents and warrants that: (i) Lessee (or any assignee or sublessee) will not at any time during the term of this Lease use or fail to use the Unit, in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48 of the United States Internal Revenue Code; (ii) Lessee (or any assignee or sublessee) will at all times during the term of this Lease use such Unit in such a way that for federal income tax purposes, all amounts includable in the gross income of Lessor with respect to such Unit and all deductions allowable to Lessor with respect to such Unit will be treated as derived from, or allowable to, sources within the United States; and (iii) Lessee will maintain sufficient records to verify such use, which records will be furnished to Lessor within 30 days after receipt of a written demand therefore.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Unit in accordance with the terms of this Lease, but the Lessee shall not assign or transfer (except as otherwise permitted by this paragraph 12) or encumber its leasehold interest under this Lease in the Unit (except to the extent that the provisions of any existing mortgage on any of the lines of railroad of the Lessee may subject such leasehold interest to the lien thereof); and, in addition, the Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Unit) which may at any time be imposed on or with respect to such Unit or the interest of the Lessor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, the Unit, except to the extent permitted by the provision of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Unit and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any corporation a majority of whose voting stock (i.e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or its Affiliates, or upon lines of railroad over which the Lessee or any such corporation has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Unit upon connecting and other railroads in the usual interchange of traffic and under standard run-through and power pooling arrangements, but only upon and subject to all the terms and conditions of this Lease.

Nothing in this Paragraph 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Unit or possession of the Unit to any corporation (which shall have duly assumed the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; provided, however, (i) that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease, (ii) such assignee or transferee shall be of a character so that after giving effect to such merger, consolidation or acquisition, the ability of the assignee or transferee to perform the obligations of the Lessee hereunder shall not, in the reasonable opinion of the Lessor, be adversely affected; and (iii) such assignee or transferee shall execute an assumption agreement expressly assuming all of the obligations of the Lessee hereunder (including, but not limited to, Paragraph 16 hereof).

In connection with any sublease or assignment by Lessee under this Paragraph 12, whether or not Lessee is required to obtain the consent of the Lessor to any such transaction, Lessee agrees, at its expense, to cause any such assignment or sublease to be duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303 in order to protect the interest of the Lessor in and to the Units under this Lease.

The Lessee agrees that during the term of this Lease, the Lessee will not assign the Unit to service involving the operation and maintenance thereof outside the United States of America and that during such term use of such Unit outside the United States of America will be limited to incidental and temporary use in Canada.

13. Option to Purchase. The Lessor hereby grants to the Lessee an exclusive right, exercisable at the discretion of the Lessee, to purchase the Unit for a purchase price equal to the fair market value thereof but not to exceed \_\_\_\_\_. This purchase option shall be exercisable by the Lessee giving written notice (the "Purchase Notice") to the Lessor not later than 120 days prior to the Purchase Date (as hereinafter defined) of its intent to purchase the Unit which notice shall specify the proposed Purchase Date which shall be the last day of this Lease. If the Lessor accepts the proposed purchase price, it shall so notify the Lessee to that effect in writing within 30 working days after receipt of the Purchase Notice, and this shall constitute an agreement as to the price of the cars to be purchased. If the Lessor does not accept the purchase

price proposed by the Lessee, the Lessor within 30 days after receipt of the Purchase Notice shall propose a purchase price for the Unit, and the Lessee shall be obligated to accept or reject orally or in writing such purchase price within 10 days after receipt of Lessor's proposal. If such price is accepted, then an agreement shall be deemed to exist with respect to the sale price of the Unit. If such price is rejected, the Lessee shall withdraw at that time its offer to purchase the Unit.

Payment for the Unit to be purchased shall be in immediately available funds, due within 30 days of invoice, but not earlier than the last day of the term hereof. The Unit when delivered for purchase shall be free and clear of all liens, charges and encumbrances, and shall be in good and useable condition, normal wear and tear for a Unit of its respective vintage excepted.

The parties acknowledge that the \_\_\_\_\_ maximum purchase price for the Unit represents the current best estimate of the maximum fair market value of the Unit on December 31, 1992.

14. Lessee's Opinion of Counsel. Concurrently with or as soon as practicable after the execution and delivery of this Lease, the Lessee will deliver to the Lessor the written opinion of counsel for the Lessee, in scope and substance reasonably satisfactory to the Lessor and its counsel, to the effect that:

(a) the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of its jurisdiction of incorporation, with adequate corporate power to enter into this Lease;

(b) this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms;

(c) the execution and performance of this Lease will not contravene or breach or create a material default under any legal, organizational or contractual obligation binding upon the Lessee;

(d) this Lease has been duly filed and recorded with the Interstate Commerce Commission under 49 U.S.C. 11303; no other filing or recording is necessary to protect in the United States of America the right, title and interest of the Lessor in and to the Unit.

15. Recording. Prior to the delivery and acceptance of the Unit, and in connection with any sublease or assignment permitted by Paragraph 12 hereof, the Lessee will cause this

Lease and any such sublease or assignment to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of proper protection to the satisfaction of the Lessor of its title to the Unit or for the purpose of carrying out the intention of this Lease.

16. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

If to the Lessor: Helm Locomotive Leasing  
c/o Helm Financial Corporation  
One Embarcadero Center  
Suite 3320  
San Francisco, CA 94111  
Attn: President

If to the Lessee: Iowa Interstate Railroad, LTD.  
818 Church Street  
Evanston, IL 60201  
Attn: David Young

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

17. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition of unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

18. Effect and Modification of Lease. This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

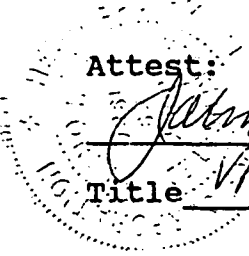
19. Successors and Assigns. This Lease will bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

20. Execution. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

21. Law Governing. This Lease shall be construed, and all questions concerning its performance and the rights and remedies of the parties hereunder shall be determined, in accordance with the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due authority, have caused these presents to be signed in their respective names as of the date first above written.

Attest:

  
John J. Davis  
Title VP Finance

HELM LOCOMOTIVE LEASING, a joint  
venture

By

[Signature]  
Title President  
Helm Equipment Leasing  
Corporation  
a joint venture in Helm  
Locomotive Leasing

Attest:

Paul T. Bauer  
Title Ch. & CEO

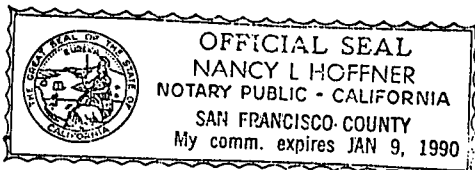
IOWA INTERSTATE RAILROAD, LTD.

By

[Signature]  
Title Controller

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN FRANCISCO )

On this 28<sup>th</sup> day of JANUARY 1988, before me personally appeared RICHARD C. KIRCHNER to me personally known, who, being by me duly sworn, says that he is PRESIDENT of Helm Equipment Leasing Corporation a joint venture in Helm Locomotive Leasing, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Nancy L. Hoffner  
Notary Public

My Commission Expires: January 9, 1990

[Notarial Seal]

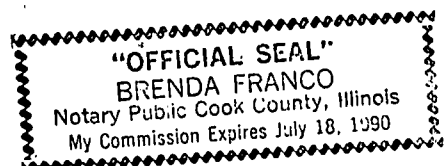
STATE OF ~~IOWA~~ ILLINOIS )  
 ) ss.  
COUNTY OF COOK )

On this 21 day of January, 1988, before me personally appears Richard C. Kirchner, to me personally known, who being by me duly sworn says that he is a Controller of IOWA INTERSTATE RAILROAD, LTD., that said instrument was signed and sealed on behalf of said corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Brenda Franco  
Notary Public

My Commission Expires: 7-18-1990

[Notarial Seal]



Annex A  
to  
Lease of Railroad Equipment  
Dated as of January 15, 1988

<u>Equipment Description</u>	<u>Quantity</u>	<u>Lessee's Numbers</u>
General Motors (Electric Motive Division) GP-38, 2000 H.P., Diesel Electric Locomotive built in 1967.	1	IAIS 600